

### DETAILED ACTION

The paper mailed 3/2/11 is withdrawn.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17,19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte*

Art Unit: 1616

*Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 1 and 9 specifically recites the broad recitation one or more, and the claims also recite preferably 1 to 3, especially 1 or 2 (see component e of claims 1 and 9) which is the narrower statement of the range/limitation.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-17, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Eberle et al. (wo 02053560; 07/11/02). Eberle et al. teach a method of protecting plants from attack by phytopathogenic organisms such as fungi comprising applying to plants a compound of formula I (See page 1 lines 5-13, Synthesis Example 1 compound 3{4-[2-(3-chloro-phenylamino—pyrimidin-4-yl)-pyridinyl-2-yl]-oxazolidin-2-one on page 16 and in claim 10, claims 1, 10-15). Eberle et al. teach instant compound when Eberle et al.'s compound comprises R<sub>1</sub> being the k moiety and therein K, m = 0, p, q = 1, R<sub>2</sub>, R<sub>5</sub>, R<sub>6</sub>, R<sub>9</sub>, R<sub>10</sub>, R<sub>11</sub>, R<sub>12</sub> = H, R<sub>3</sub> = halogen, X = carbonyl, Y = oxygen. Eberle et al. teach that the compound can be combined with a carrier to form a composition (see claim 12).

Claims 9-17, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Zimmermann (WO 9509853; 4/13/95). Zimmermann teaches the compound N-(3-chloro-phenyl)-4-[2-(2—hydroxy-propyl-amino)-4-pyridyl]-2-pyrimidineamine and N-(3-chloro-

Art Unit: 1616

phenyl)-4-[2-(2—carboxy-ethyl-amino)-4-pyridyl]-2-pyrimidineamine (see page 36 1<sup>st</sup> 2 named compounds in Example 3). Zimmerman teaches instant compound when Zimmerman's compound comprises R1 being mono lower alkyl substituted by hydroxy, R2,R3,R5,R6, = H, R4 = halogen. Zimmerman teaches that the compound can be combined with a carrier to form a composition (see claim 11).

### ***Election Status***

The elected compound for the compound and method claims is allowable. The prior art does not teach or suggest the elected compound. The elected group II is not allowable as a whole. The prior art teaches compounds in Group II and their usefulness in controlling phytopathogenic fungi. See art rejections above.

### ***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALTON PRYOR whose telephone number is (571)272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1616

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/Alton N. Pryor/  
Primary Examiner, Art Unit 1616